



Llywodraeth Cymru
Welsh Government

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Commission for Tertiary Education and Research (CTER) registration system initial regulations: children's rights impact assessment

Children's rights impact assessment of the CTER registration system initial regulations.

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Policy objectives

The Tertiary Education and Research (Wales) Act 2022 ('the TER Act'), provided the establishment of a new Commission for Tertiary Education and Research (the Commission). The Commission will be the regulatory body responsible for the funding, oversight and regulation of tertiary education and research in Wales. The TER Act requires the Commission to establish and maintain a register of tertiary education providers in Wales. A series of regulations are required to enable the register and associated regulatory oversight system to operate as intended.

These are necessary for the Commission to establish and operate the Register but allow it the operational freedom to develop its own expectations of providers to satisfy regulatory requirements.

Since the introduction of the Act, an organisational branding exercise has since been undertaken and a decision made to replace the acronym 'CTER' with 'The commission', meaning skill and ability, as its brand name. This suggestion was well received during recent stakeholder engagement, due to its clear link to the ambition and priorities of the Commission, whilst also being considered as simple enough to work well on an international level. A decision was therefore made to use its legal name: Y Comisiwn Addysg Drydyddol ac Ymchwil / Commission for Tertiary Education and Research, which going forward will be used underneath 'The commission' in all communications.

The first two sets of these draft regulations under The Tertiary Education and Research (Wales) Act 2022 are the focus of this CRIA and are regulations that have that will affect registration of higher education providers. They are:

1. **Registration of Tertiary Education Providers in Wales Regulations.**
These regulations make provision about the categories of registration, the information which must be included in a provider's entry in the register,

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further initial and ongoing conditions of registration, the category to which a fee limit applies, eligibility of registered providers to receive funding from the Commission for the purposes of HE or research and innovation.

2. **Designation of Providers in Wales Regulations**. These regulations make provision about designation of a provider as an institution for the purpose of making a registration application. They set out the procedure and supporting evidence for designation applications by providers which would not be considered as an institution other than for the designation. Designation as an institution does not confer any rights or duties on a provider but will enable non-institutional providers to seek registration with the Commission.

It has been the stated policy intent to make regulations to implement the register for the regulation of higher education providers only when the **TER Act 2022 was passed by the Senedd on the 28 June 2022** and was included in the **Statement of Policy Intent which accompanied the Act** on its introduction to the Senedd. Making regulations to implement the register for the regulation of higher education providers will allow the register to form a regulatory gateway for the automatic designation of higher education courses for Welsh Government student support, and TER Act provides the Commission with a range of regulatory intervention functions to support the regulatory regime.

Making regulations to implement the register for the regulation of higher education providers entails the following key elements

- The Welsh Ministers making regulations to specify the categories of registration which apply to higher education providers
- The Commission would in turn be required to establish a register of higher education providers only
- Further education providers, for non-higher education provision, would continue to be primarily regulated through the Commission's terms and

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conditions attached to grant funding

- The TER Act requires the Commission to consider imposing terms and conditions of funding for further education providers relating to many of the mandatory ongoing conditions of registration applicable to registered providers

Making regulations to implement the register for the regulation of higher education provides key advantages which in the long term will be advantageous to students. All post-16 providers would be regulated with the same oversight mechanism offering greater consistency and coherence across the sector. It will allow the Commission to monitor and promote improvement in education and training providers which in turn will be advantageous to the students who are receiving education from these providers.

Further advantages include

- The Welsh Ministers would comply with their duty to make regulations to specify the one or more categories of registration.
- The Commission would be able to comply with its statutory duty to establish and maintain a register of tertiary education providers.
- This option focuses resource where there is a clear policy need as it will provide consistent regulatory oversight of providers whose higher education courses are automatically designated for Welsh Government student support. This is because regulatory oversight of such providers cannot be achieved through terms and conditions of funding alone, as tuition fee payments are a contractual undertaking between providers and their students.
- This approach will also allow parity and coherence of regulatory oversight in respect of the different types of tertiary education providers where terms and conditions of funding can achieve the necessary regulatory oversight.
- This option presents less resource and capacity issues for the Commission and places fewer administrative burdens on further education providers for

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provision that is not HE, as they would continue to be regulated in a way which they are familiar with.

- Under the TERA the Higher Education Funding Council for Wales (HEFCW) is being dissolved and a replacement for the current, regulatory system is a priority when the underpinning legislation is repealed.

Information around evidence requirements for satisfaction of the initial registration conditions and expectations about compliance with the ongoing registration conditions is yet to be developed by the Commission. However, there are regulatory requirements on the face of the 2022 Act which the Commission will need to consider and develop for young people in Wales, which are:

1. **The Learner Engagement Code:** this Code is intended to ensure learners' interests are represented, that learners can give their views to providers about the quality of education they receive, and to participate in the making of decisions by those providers.
2. **The Learner Protection Plan:** this aims to set out how a provider will protect learners' interests in the event of course disruption or closure, and how providers might facilitate the transfer of learners to other providers.
3. **Equality of Opportunity:** this relates to an introduction of measurable outcomes in respect of equality of opportunity ensuring increasing participation, increasing retention, reducing attainment gaps and provision of support in respect of learners who are members of underrepresented groups.
4. **Welfare of students and staff:** this relates to the effectiveness of provider's arrangements for supporting and promoting the welfare of its students and staff.

The regulations, when made, will enable the Commission to establish the registration system for tertiary education providers of higher education in Wales. The regulations, which are subject to this assessment, allow for the Commission to establish the register, invite, and determine registration applications, impose

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conditions of registration and undertake regulatory interventions.

The regulations will give the Commission the operational freedom it needs, as an arms-length body, to develop its own expectations of providers to satisfy the regulatory requirements, and to establish its distinct approach to monitoring and intervention.

Details around these conditions will need to be developed by the Commission.

Gathering evidence and engaging with children and young people

The Welsh Government recently consulted on the policy proposals and draft regulations ([Registration of Tertiary Education Providers in Wales Regulations](#) and [Designation of Providers in Wales Regulations](#)) which is the focus of this CRIA. The [consultation was held between 31 October 2023 and 5 February 2024](#) and focused upon making regulations to implement the register for the regulation of higher education providers only. This was the intent as only providers of higher education will be eligible to apply to be registered with the Commission, and, as such, this will initially be the only group of providers who will be subject to the conditions of registration.

The consultation was sent to a wide range of organisations including the Children's Commissioner for Wales and National Union of Students in Wales. The consultation attracted 21 responses, with 11 responses received from higher education providers. There were no responses received from the Children's Commissioner for Wales and National Union of Students in Wales. The total responses were mainly from higher education institutions and organisations predominantly based in Wales. Responses also include the regulatory body HEFCW and the Commission. A [summary of the consultation responses](#) was published in April 2024. Responses received highlighted

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that conditions relating to the information provided to prospective students about the provider, its courses and its terms and conditions of contracts with students is important, and that there is a need for the Commission, when setting the detailed requirements for the initial conditions of registration, to consider the full range of institutions applying for registration and develop an approach that is proportionate to the risks presented.

New requirements are on the face of the **2022 Act** that are part of the strategic framework which the Commission will need to develop, will be in place to protect and help young people studying under those registered education providers. The main changes regarding the new regulatory system would be registration conditions for providers relating to:

- The Learner Engagement Code
- The Learner Protection Plans
- Equality of Opportunity
- Welfare of students and Staff

The registration and regulatory system require new registration conditions to be implemented and registered providers will instead need to comply with a range of ongoing conditions of registration. This approach is anticipated to reduce the degree of burden on currently regulated higher education providers in the longer term, however the Commission will need to monitor and review the regulatory system to ensure that regulatory burden is minimised.

Learner Protection Plans aim to set out how a provider will protect learners' interests in the event of course disruption or closure, and how providers might facilitate the transfer of learners to other providers. It is anticipated that the plans will provide clarity for learners if they are unable to continue to study at a provider, if it ceases to operate or is unable to continue to teach learners (for example, international students in the event of the loss of a UKVI Student Visa Licence or particular subject provision in the event of the unforeseen loss of facilities).

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When developing the requirements of the learner protection plans, the Commission should consider drawing upon other examples of tertiary education reforms.

For example, as part of the **Australian Higher Education Standards Framework (Threshold Standards) 2021** the **threshold standards contain obligations for providers** to ensure there are credible business continuity plans and adequately resourced financial and tuition safeguards to mitigate disadvantage to students who are unable to progress in a course of study due to unexpected changes to the higher education provider's operations.

The **Learner Engagement Code is a condition of the 2022 Act** which is intended to ensure learners' interests are represented, that learners can give their views to providers about the quality of education they receive, and to participate in the making of decisions by those providers. It is anticipated that the code will benefit learners by setting out expectations in respect of how providers should engage learners and take account of the 'learner voice'. This should enable providers to better understand the needs of learners.

The condition of registration regarding the effectiveness of the provider's arrangements for supporting and promoting the welfare of its students and staff will underpin the retention of, and attainment by, learners and the Wellbeing of Future Generations goals.

There are examples where other regulators have taken forward conditions of registration to support learners, as below, however it will be for the Commission to determine how it approaches its registration conditions beyond that specified in the regulations.

The Office for Students (OfS), which regulates higher education in England, provided a **revised statement of expectations** covering staff and student training, and policies to facilitate the reporting and disclosing of harassment and sexual misconduct. OfS commissioned an **evaluation on the initial impact of**

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the publication of the statement of expectations. Students and representatives from multiple providers and the OfS' Student Panel members were consulted. The results from this evaluation highlighted that the 'statement of expectations' had not been a sufficient substance for change in its current form. Students reported that more transparency is needed, especially acknowledging that issues of harassment and sexual misconduct exist on campuses, and that an increase in reports is necessary and a positive indication of change. The report recommended that OfS make prevention of and response to harassment and sexual misconduct a mandatory duty and as part of their regulatory framework. The report also highlighted there is inadequate data at sector and individual provider level to inform and assess the effectiveness of interventions. This led to **Office for Students (OfS) to consult** on a proposed new approach to the regulation of harassment and sexual misconduct affecting students in registered higher education providers. The proposed new condition would require universities and colleges to publish a single document explaining:

- the steps it will take to protect students from harassment and sexual misconduct
- arrangements for handling incidents
- details of how it will support anyone involved in incidents
- details of training for students and staff

A **pilot survey for students is being conducted to understand how widespread sexual misconduct is in English universities.** The pilot will decide whether a national survey should be conducted and help those universities who are taking part in the pilot to better understand what actions they need to take.

Both the Australian and New Zealand Governments have provided a framework which forefronts the welfare of their students and staff within the tertiary Education sector. **Australian Government TEQSA Higher Education Standards Framework (Threshold Standards) includes details of organisational responsibilities for the wellbeing of staff, supporting the**

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wellbeing and promoting the safety of students. This requires providers to deliver timely and accurate advice on access to student support services and to promote and foster a safe environment on campus and online. It also requires providers to stipulate evidence on how they are achieving this. The **New Zealand Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021** makes sure that tertiary and international learners enrolled with New Zealand education providers are safe and supported.

The Commission should consider reviewing other examples of Tertiary Education reforms in order to drive best practice in Wales.

The mandatory Condition of Registration in respect of Equality of Opportunity will help to drive improvement in respect of access, retention, attainment and progression for under-represented groups. The requirements will also be applicable to a broader range of providers than the current Fee and Access Plan requirements, therefore impact a greater number of learners. Ultimately, this Condition will benefit learners by improving employment and further study outcomes and contribute to the **Wellbeing of Future Generations goal of 'A More Equal Wales'**.

New requirements on the face of the 2022 Act are part of the strategic framework which the Commission will need to develop and provide information and guidance in relation to higher education providers, learner, and other representatives. It is expected that the Commission will undertake its own consultation and impact assessments as part of the development process of the register.

- What participatory work with children and young people have you used to inform your policy? If you have not engaged with children and young people, please explain why (Article 12 of the UNCRC stipulates that children have a right to express their views, particularly when adults are making decisions that affect them, and to have their opinions taken into account).

To summarise, the voice of young people was captured as part of the development of the Tertiary Education Act 2022 and through the voice of Children and Young People (CYP) the Act was developed. A **separate CRIA was conducted for the Act which can be found on the Welsh Governments website.**

This CRIA focuses on Tranche 1 of the two draft regulations regarding the registration of higher education providers which were consulted on. These Regulations will not establish the register but provide the legislative underpinning to enable the Commission to establish the register. The register will enable appropriate and proportionate regulation of higher education providers in receipt of public funds, including grant funding from the Commission and Welsh Government student support. This is essential as providers whose higher education provision is primarily funded by tuition fees cannot be regulated through the Commission's terms and conditions of funding alone. This is because tuition fee payments are a contractual undertaking between providers and their students. The Register will provide a clear link with the benefits arising from access to such funding and ensure that higher education providers are publicly accountable and can contribute to the Commission's strategic priorities. The draft regulations at present under Tranche 1 are anticipated to directly affect learning providers.

The tranche 2 consultation was brought to the Children's Rights Advisory Group (CRAG) to seek advice. They suggested that we should engage with CYP but acknowledged that this was difficult given the technical and high-level nature of the proposed regulations. The Commission will need to develop their strategic plan which will have tangible impacts on CYP. It was suggested that engagement as part of this process would be more meaningful.

To ensure that young people could contribute to the tranche 1 consultation, the consultation was sent to a wide range of organisations including the Children's Commissioner for Wales and National Union of Students in Wales. There were no responses received from the Children's Commissioner for Wales and

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National Union of Students in Wales. The total responses were mainly from those institutions and organisations based in Wales providing higher education. This was expected since the draft regulations were concerned with the registration of the higher education providers only.

As part of the Tertiary Education and Research Act 2022 development, consultants proficient in engagement with young people were engaged to produce a **young people's consultation on the proposed tertiary education reforms**. A **CRIA was also conducted for the 2022 Act**. This was designed with children in mind and a child friendly version was created. The consultation ran for eight weeks and asked for the views of children and younger learners on proposals for tertiary education reform. Young people from a range of age groups and socio-economic backgrounds were invited to share their views. The **consultation responses were published in November 2017**. The consultation exercise highlighted that young people experience many different barriers to accessing tertiary education. These ranged from financial problems to transportation and lack of interest in progressing their learning.

The **'learner voice' was also captured at Skills Cymru events**, where engagement with learners from a range of backgrounds and ages took place, from primary school to older adults. The feedback received from this event helped to ensure that learners' views have been considered as the policy underpinning the TER Act was developed. For example, a key message from the events was the concept that 'learner support should be designed with learners'. Under the TER Act, the Commission must prepare and publish a code, for example, a 'learner engagement code'. This is to ensure learners have the opportunity to give their viewpoints about the quality of education they receive to their providers and ensure that they have an opportunity to influence decision making undertaken by providers.

As the Welsh Government consultation on the policy proposals and draft regulations (**Registration of Tertiary Education Providers in Wales Regulations** and **Designation of Providers in Wales Regulations**) received

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no responses from or on behalf of young people. consideration was given to whether there was any further merit, at this point, in consulting young people, through Young Wales. However, as it will be a matter for the Commission to determine how it discharges its functions, and at this stage there is no additional information as to how the registration conditions will be shaped beyond that included in the consultation document. It was decided not to consult again as we could not have any meaningful discussion with young people or the opportunity for their voice to implement change at this point. It is also expected that the Commission will undertake its own consultation and impact assessments when developing the register and in the **Commission preparing and delivering their strategic priorities** set out by the Welsh Government.

A **summary of the consultation responses were published in April 2024.**

The post implementation review of the TER Act 2022 will also explore the views of CYP and will consider the response of young people as a measure of the Bill's success.

Analysing the evidence and assessing the impact

The regulations will enable the establishment of a register for providers of higher education. It is expected that most higher education students would be over the age of 18. However, the register may be of interest to students, prospective students and other stakeholders about registered providers. The provision of post-16 education and training affects learners of all ages, including children, and as such the impacts stretch much further than those of CYP and as such supports the purposes of the UNCRC, and directly relates to the following Articles:

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Article 2: The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from

The mandatory Condition of Registration in respect of the Commission promoting Equality of Opportunity will help to drive improvement in respect of access, retention, attainment and progression for under-represented groups.

Article 3: All organisations concerned with children should work towards what is best for each child

The regulations specify a core set of information of interest to students, prospective students and other stakeholders about registered providers, that the Commission must keep up to date and publicly available. The condition of registration regarding the effectiveness of the provider's arrangements for supporting and promoting the welfare of its students and staff will underpin the retention of, and attainment by, learners and the Wellbeing of Future Generations goals.

Once established by the Commission, the register will provide assurance to learners as to the quality of education, governance arrangements and financial management of a higher education provider. Additionally, that there are appropriate, safeguards for learners in place, active learner engagement, and a focus on equality of opportunity.

Article 12: Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account

Although there was no engagement with young people and students on the development of the regulations which will impact providers of higher education only, in the development of the TER Act, consultants proficient in engagement with young people were engaged to produce a young people's consultation on the proposed tertiary education reforms. This was designed with children in mind and a child friendly version was created. The consultation ran for eight weeks and asked for the views of children and younger learners on our proposals for tertiary education reform. Young people from a range of age groups and socio-economic backgrounds were invited to share their views.

The 'learner voice' was also captured at Skills Cymru events, where engagement with learners from a range of backgrounds and ages took place, from primary school to older adults. The feedback received from this event helped to ensure that learners' views have been considered as the policy underpinning the TER Act was developed.

The Learner Engagement Code which is a requirement of registered providers under the TER Act is intended to ensure learners' interests are represented, that learners can give their views to providers about the quality of education they receive, and to participate in the making of decisions by those providers.

Article 28: Children have a right to an education. Discipline in schools should respect children's human dignity. Primary education should be free. Wealthy countries should help poorer countries achieve this

The registration system and conditions of registration aim to maintain and enhance the quality of the tertiary system, continue, and intensify work on widening participation and take steps to ensure a more equitable and excellent system for all. Data collected aims to identify inequities in the tertiary system and introduce a response that will include the setting of ambitious targets and actions for providers to reduce the inequity of access to tertiary education, improve the diversity of intake where it is low and reduce attainment gaps.

Article 29: Education should develop each child's personality and talents to the full. It should encourage children to respect their parents, their own and other cultures and the environment

This register, once established, will designate courses for access to public funding, which enables post-16 providers to deliver a range of different education and training that enables young people to develop the skills and confidence they need to thrive.

This will need to be assessed once the register is established therefore, it is expected that the Commission will undertake its own consultation and impact assessments as part of the development process of the register.

Ministerial advice and decision

This CRIA will accompany the full IAA. An EM and RIA will also be published along with this CRIA for these draft regulations.

There will be a post-implementation evaluation undertaken by Welsh Government similarly to the [Higher Education \(Wales\) Act 2015](#) and we will continue to work with the Commission, providers, and representative bodies. A long-term plan to gather evidence of costs and benefits will be needed to provide a value for money assessment when the regulations have been embedded. It is suggested that these are reviewed at a three year and 5-year intervals. As further detail becomes available through the post implementation evaluation of the legislation, the operation of the body and the registration system a greater understanding of the potential consequences associated with any changes being proposed will be captured at that stage in updated impact assessments.

Communicating with Children and Young People

The regulations under tranche 1 are a fairly limited and allow for the creation of the registration system. The draft Regulations under Tranche 1 are anticipated to directly affect learning providers rather than CYP.

The [Commission is required to prepare a strategic plan](#) setting out how it will address the strategic priorities required under section 13 of the Act and how it will discharge the strategic duties given to it under the Act. In preparing the plan, the Commission must consult such persons as it considers appropriate, and the plan must be submitted to the Welsh Ministers for approval. The Commission is under a duty to publish its approved plan and take all reasonable steps to implement it. It is expected that the Commission will undertake its own consultation and impact assessments as part of the development process of the

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register which will include CYP.

Monitoring and Review

As the regulations and the register have yet to be implemented, this information will be used to develop and refine the registration system. Welsh Government will work closely with the Commission to ensure that this CRIA will be reviewed and inform the Commission's own impact assessment.

The **Commission's strategic plan** setting out how it will address the strategic priorities required under section 13 of the Act, will be expected to be developed by consulting persons as it considers appropriate. The Commission is under a duty to publish its approved plan and take all reasonable steps to implement it. To achieve this, the Commission will be expected to undertake its own consultation and impact assessments as part of the development process. We anticipate that the Commission will need to focus on developing its expectations for providers' activities related to the new registration conditions of the 2022 Act, for example, Learner engagement code. It is also anticipated that costings for the introduction of these activities be costed to ensure a baseline.

There will be a post-implementation evaluation undertaken by Welsh Government, similarly to the Higher Education (Wales) Act 2015 we will continue to work with the Commission, providers, and representative bodies. A long-term plan to gather evidence of costs and benefits will be needed to provide a value for money assessment when the regulations have been embedded. It is suggested that these are reviewed at a three year and 5-year intervals. As further detail becomes available through the post implementation evaluation of the legislation, the operation of the body and the registration system, a greater understanding of the potential consequences associated with any changes being proposed will be captured at that stage in updated impact assessments.

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